ST 98-26
Tax Type: SALES TAX
Issue: Statute of Limitations Application

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

THE DEPARTMENT OF REVENUE	)	
OF THE STATE OF ILLINOIS	)	
	)	**Docket No.**
v.	)	**Acct. #**
	)	**Claim for Verified**
	)	**Overpayment**
JOHN DOE d/b/a	)	
TAXPAYER	)	
Taxpayer	)	

RECOMMENDATION FOR DISPOSITION

Synopsis:

The parties have stipulated to the facts of this case. JOHN DOE d/b/a TAXPAYER ("taxpayer") overpaid his Sales Tax liability in October of 1985. He filed a claim for credit for the overpayment on or about September 8, 1994. After the Department of Revenue ("Department") listed the verified overpayment on the taxpayer's December 26, 1995 Statement of Account, taxpayer filed a Claim for Verified Overpayment on January 24, 1997. On February 11, 1997, the Department issued a Notice of Tentative Denial based on the applicable statute of limitations. After reviewing the record, it is recommended that the matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. Taxpayer filed a claim for credit or refund on or about September 8, 1994, in the amount of $4,133.05. The Department acknowledged receipt of this claim in a letter to the taxpayer. (Stipulation #1)

2. On December 26, 1995, the Department listed a verified overpayment of Sales Tax from October of 1985, in the amount of $4,133.05, on the taxpayer's Statement of Account. (Stipulation #3)

3. On January 24, 1997, the taxpayer filed a form ST-6 "Claim for Verified Overpayment" seeking refund of $4,133.05. (Stipulation #4)

4. On February 11, 1997, the Department issued a Notice of Tentative Claim Denial, denying the taxpayer's claim as being barred by the applicable statute of limitations. (Stipulation #5)

5. The taxpayer timely protested the Notice of Tentative Claim Denial issued by the Department. (Stipulation #6)

CONCLUSIONS OF LAW:

A taxpayer that has paid more tax to the Department of Revenue than is due is entitled to receive a refund or credit memorandum from the Department for that excess amount. 35 ILCS 120/6 (West 1996). However, the statute that creates this right also expressly limits the period in which the refund or credit memorandum can be issued. Id. It reads:

> However, as to any claim for credit or refund filed with the Department on and after each January 1 and July 1 no amount of tax or penalty or interest erroneously paid (either in total or partial liquidation of a tax or penalty or amount of interest under this Act) more than 3 years prior to such January 1 and July 1, respectively, shall be credited or refunded, except that if both the Department and the taxpayer have agreed to an extension of time to issue a notice of tax liability

> as provided in Section 4 of this Act, such claim may be filed at any time prior to the expiration of the period agreed upon.

Id. This means that, absent an extension agreement between the Department and the taxpayer, a taxpayer will have a maximum of three and one-half years in which to file a request for credit or refund. Any request filed after the permitted time period has passed must be denied.

The taxpayer overpaid his Sales Tax liability by $4,133.05 in October of 1985. The last day on which he could have filed his request for a refund of this overpayment was December 31, 1988. A filing on that date would count three years back from the previous July 1 (July 1, 1988) to determine payments eligible for refund. Any overpayment made after July 1, 1985 would be refundable. In contrast, any request for refund made on or after January 1, 1989 would only reach overpayments made on or after January 1, 1986. As of January 1, 1989, overpayments made in October of 1985 were no longer eligible for refund or credit. The taxpayer's first claim for a refund, filed on or about September 8, 1994, was filed too late to receive funds overpaid in October of 1985. All subsequent claims were also filed too late.

The taxpayer attempts to apply the discovery rule to the statute of limitations discussed above. The discovery rule states that a cause of action does not arise until a plaintiff knows or should reasonably know that she has been injured. Witherell v. Weimer, 85 Ill. 2d 146, 156 (1981). The taxpayer argues that because the Department did not notify him until 1992 that he had overpaid his Sales Tax liability that the statute of limitations should not have expired until 1995 at the earliest. The taxpayer's 1994 claim for a refund would then fall within the statute of limitations.

The discovery rule does not apply where the statute in question indicates a contrary legislative intent. Hermitage Corp. v. Contractors Adjustment Co., 166 Ill. 2d 72, 78 (1995). Many statutes of limitations, particularly those relating to tort actions, are based on the date on which a cause of action accrues, a term that leaves room for interpretation. The statute providing for claims for Sales Tax refunds does not employ such a term. That statute expressly measures which overpayments are eligible to be refunded based on the filing date of the claim for refund. 35 ILCS 120/6 (West 1996). It would be contrary to the plain language of the statute to measure the limitation from the date when the taxpayer became aware of the overpayment.

The discovery rule is intended to protect those individuals who are unaware that someone else has taken an action that has caused him or her injury. 166 Ill. 2d at 77-78. In the present case, the Department did not cause the taxpayer injury. The taxpayer overpaid his Sales Tax and was unaware of his own mistake. The Department is not responsible for notifying taxpayers when they have overpaid their taxes. The overpayment was not otherwise attributable to any action by the Department. The only actions of which the taxpayer needed to be aware in order to file a claim for a refund were his own. There is no need to apply the discovery rule in this situation to protect the taxpayer from unknown injury.

The statute in question in this case is not a true statute of limitations in that it was not enacted to restrict a common law cause of action but rather makes time an element of a right created by the statute. Smith v. Toman, 368 Ill. 414, 420 (1938). The statute creates the right of a taxpayer to receive a refund of any overpaid taxes and at the same time defines the conditions under which this right may be exercised. These conditions include a limitation on how recent a payment must be to be eligible for refund. The time limitation is part of the right of action. North Side Sash and Door Company v. Hecht, 295 Ill. 515, 520 (1920). The conditions imposed by the statute must be strictly applied and if they are not met there is no right to a refund. In the present case, the overpayments for which a refund is requested were almost nine years old when the taxpayer first requested a refund. The statute only creates a right to a refund for payments that were less than three and a half years old (at a maximum) at the time a refund request is made. 35 ILCS 120/6 (West 1996). The statute does not create a right to a refund of the overpayments in this case.

Both parties raise the issue of whether the Department should be estopped from denying the taxpayer's claim for a refund as a result of the Department's December 26, 1995 Statement of Account to the taxpayer showing a verified overpayment. As indicated by the authority cited by the taxpayer, the State can only be estopped when it has taken positive action through its officials which leads an individual to take action and where inequity would result if the State were allowed to disavow its action. Hickey v. Illinois Central Railroad Co., 35 Ill. 2d 427, 448 (1966). The Department in this case has done nothing that caused the taxpayer to take detrimental action. The Department did not cause the taxpayer to make an overpayment and it did not cause him to delay in requesting a refund. The Department's only action, listing the overpayment on the taxpayer's Statement of Account, was taken after the statute of limitations had passed. As discussed above, as of January 1, 1989 the taxpayer was unable to receive a refund for overpayments made in October of 1985. The Statement of Account was issued on December 26, 1995, almost seven years after the taxpayer would have been able to receive a refund. This action could not possibly have caused the taxpayer to take action (or to refrain from action) which would have cost him his chance to receive a refund. There is no cause to estop the Department from denying the taxpayer's refund.

The taxpayer's request for refund of the overpayments made in October of 1985 was filed after the applicable statute of limitations had run. The discovery rule does not apply to this case and the Department is not estopped from denying the taxpayer's request for refund. Although the taxpayer feels it is unfair for the Department to list overpayments on his Statement of Account that are not eligible for refund, this perceived unfairness does not change the statute which governs requests for Sales Tax refunds.

It is therefore recommended the taxpayer's Claim for Verified Overpayment be denied.

Administrative Law Judge

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